

STATE OF NEW MEXICO

BEFORE THE SECRETARY OF ENVIRONMENT

NEW MEXICO ENVIRONMENT
DEPARTMENT RESOURCE
PROTECTION DIVISION,

Case No. SWB 20-01 (CO)

Complainant,

v.

BL SANTA FE, LLC,

and

HRV HOTEL PARTNERS, LLC

Respondents.

**RESPONDENT BL SANTA FE, LLC'S MOTION TO PROPOUND
SEVEN INTERROGATORIES AND SERVE SUBPOENAS FOR CERTAIN
DEPOSITIONS AND DOCUMENTS**

Pursuant to New Mexico Administrative Code ("NMAC") 20.1.5.300(F)(1), Respondent BL Santa Fe, LLC ("BL Santa Fe") respectfully moves the Hearing Officer for an Order allowing BL Santa Fe to propound seven (7) interrogatories on the New Mexico Environment Department ("NMED") and to subpoena depositions of and / or documents from the following: William Garcia, Richard Holland, James Spehar, and Advanced Environmental Solutions (collectively, "Deponents"). The proposed interrogatories are attached as **Exhibit 1**, and the proposed subpoenas are attached as **Exhibit 2**. As shown below, the requested discovery is reasonable, meets the grounds listed in 20.1.5.300(A)(1), and is necessary to ensure fairness to BL Santa Fe in these proceedings.

ARGUMENT

A. The Proposed Interrogatories and Depositions Meet the Grounds Listed in 20.1.5.300(A)(1) NMAC.

New Mexico Administrative Code ("NMAC") 20.1.5.300(F) instructs that requests for depositions and interrogatories may be granted upon determination by the Hearing Officer that

the grounds listed in 20.1.5.300(A)(1) NMAC are met. NMAC 20.1.5.300(A)(1) explains that discovery of non-privileged information may be permitted if: (1) it will not unreasonably delay the proceeding; (2) the information to be obtained is not unreasonably cumulative or duplicative, or otherwise reasonably obtainable; (3) the discovery is not unreasonably burdensome; and (4) there is substantial reason to believe that the information sought will be admissible at the hearing or will lead to the discovery of admissible evidence.

1. The Proceeding will not be Unreasonably Delayed by the Proposed Interrogatories and Depositions

The hearing will not be delayed. All requested interrogatories, depositions, and documents to be subpoenaed will be completed before the January 26, 2022 hearing date, provided they are timely authorized by the Hearing Officer.

2. The Information Sought is not Cumulative, Otherwise Obtainable, or Unreasonably Burdensome, and There Is Substantial Reason To Believe It Will Be Admissible or Lead to Admissible Evidence.

a. *Interrogatories*

Interrogatory 1 seeks NMED's evidence that the transporters were not registered to haul the sludge, did not have manifests, and that BL Santa Fe was aware of those facts. BL Santa Fe does not have access to this information because its records and knowledge are under the control of the prior owner and manager, Richard Holland, who did not disclose the existence of these proceedings prior to the sale. *See* Amended Answer, ¶ 4. BL Santa Fe is also unaware of the basis for which the NMED claims that BL Santa Fe was aware of the alleged unregistered, unmanifested status of the transporters such that it should be fined in the amounts sought. BL Santa Fe is unaware of this information appearing in the Administrative Record (at least no record that the NMED has provided or otherwise made available to counsel). BL Santa Fe's new management has no way of obtaining that information without interrogatories or the subpoenas that have been requested, and thus no way of defending itself from these accusations in these proceedings without discovery. Asking the NMED to provide the evidence supporting its allegations does not pose an unreasonable burden, as the NMED must prove its case, and the requested discovery is necessary to ensure fairness to BL Santa Fe and its new owners and

1 managers, who were unaware and uninvolved in the transactions described in the Compliance
2 Order, and who purchased BL Santa Fe without disclosure or knowledge of the existence of
3 these proceedings from Mr. Holland.

4 Interrogatory 2 seeks NMED's evidence that BL Santa Fe misrepresented or misled the
5 nature of the sludge. NMED has not supported its allegation with evidence in the
6 Administrative Record (at least not any record the NMED has provided or otherwise made
7 available to counsel), so the requested discovery is not duplicative. Not all communications, or
8 their details, are likely contained in whatever written documents NMED may eventually make
9 available to counsel, which have not been produced or otherwise made available to counsel to
10 date. Thus, seeking the details of verbal communications, if any, is not duplicative of requesting
11 documents of such communications. BL Santa Fe's new management has no way of obtaining
12 this evidence without interrogatories or deposing every employee of NMED who has been
13 involved in this matter, and BL Santa Fe has chosen the far less burdensome discovery option of
14 seeking the information through a single interrogatory. Finally, asking NMED to provide
15 evidence supporting its allegations is entirely appropriate and necessary to provide for fair notice
16 before the hearing. It certainly does not pose an unreasonable burden.

17 Interrogatory 3 seeks communications between BL Santa Fe and the Pueblo regarding
18 the sludge and disposal, assuming NMED has such knowledge. NMED has not provided those
19 communications in the Administrative Record (at least not any record the NMED has provided
20 or otherwise made available to counsel). Not all communications, or their details, are likely
21 contained in whatever written documents NMED may ultimately make available, none of which
22 have been provided to date. Thus, seeking the details of the verbal communications is not
23 duplicative. In addition, BL Santa Fe's new management has no way of obtaining this evidence
24 without interrogatories or deposing every employee of NMED who has been involved in this
25 matter, and BL Santa Fe has chosen the far less burdensome discovery option of asking for the
26 information in a single interrogatory. Finally, asking NMED to provide evidence supporting its
27 allegations is entirely appropriate and necessary to provide for fair notice before the hearing. It
28 certainly does not pose an unreasonable burden.

Interrogatory 4 seeks communications between BL Santa Fe and the Pueblo regarding the sludge and disposal. NMED has not provided those communications in the Administrative Record (at least not any record the NMED has provided or otherwise made available to counsel), so seeking such evidence would therefore not be duplicative. In addition, BL Santa Fe's new management has no way of obtaining this evidence without interrogatories or depositions—even BL Santa Fe's old management, with whom new management has no contact, may be unaware of those communications or their content. Finally, asking NMED to provide evidence supporting its allegations does not pose an unreasonable burden, but is instead necessary to ensure fairness in these proceedings. To date, the Pueblo's attorney has been unresponsive to providing this information informally, leaving BL Santa Fe with no alternative but to request this information through formal discovery. *See* **Exhibit 3**.

Interrogatory 5 seeks NMED's knowledge of the physical and chemical characteristics of the sludge. BL Santa Fe's new management has attempted to obtain that information for itself by contacting the attorney for the Pueblo of Pojoaque ("Pueblo") and asking for permission to enter Pueblo lands and inspect the site (once that location has been disclosed to BL Santa Fe's new management, of course), but neither the Pueblo nor its attorney have responded. *See* **Exhibit 3**. Asking the NMED to provide whatever evidence it possesses of the physical and chemical characteristics of the sludge it seeks to compel BL Santa Fe to remove and remediate does not pose an unreasonable burden, and is entirely appropriate and fair in light of the fact that the NMED seeks to order BL Santa Fe onto Pueblo lands to remove and remediate waste, some of which BL Santa Fe likely did not place on Pueblo lands.¹

Interrogatory 6 seeks information about the volume and characteristics of the waste that has been accepted at the disposal location in the past in light of the NMED's order that the waste be removed and remediated by BL Santa Fe. The NMED has not provided evidence of the volume or characteristics of past-accepted waste in the Administrative Record (at least not any record the NMED has provided or otherwise made available to counsel) and seeking such

¹ The contractor the Pueblo retained to opine on the cost of removal and remediation of waste at the disposal location described the waste as including "1,300 cubic yards of baled tires," which, to BL Santa Fe's understanding, it would not have placed.

1 evidence would therefore not be duplicative. BL Santa Fe's new management has attempted to
2 obtain that information for itself by contacting the attorney for the Pueblo, but the Pueblo has
3 not responded. See Exhibit 3. While the Pueblo did provide an estimate for the removal that
4 contains a conclusory statement as to the amounts it wants removed, no evidence of any testing
5 or investigation regarding the disposal at issue has ever been provided or referred to. Asking
6 NMED to provide whatever evidence it has on this issue is entirely appropriate and necessary to
7 provide for fair notice before the hearing. It certainly does not pose an unreasonable burden.

8 Interrogatory 7 seeks information about the subject matter and content of the expected
9 testimony of NMED's witnesses at the hearing, so BL Santa Fe may consider interviewing or
10 deposing those witnesses regarding their knowledge, so that it may have fair notice of the
11 evidence against it and develop evidence in its defense. NMED has not provided information
12 about the subject matter or content of its expected witness testimony in the Administrative
13 Record (at least not any record the NMED has provided or otherwise made available to counsel),
14 and has not identified any witnesses yet. Seeking such information would therefore not be
15 duplicative.

16 *b. Deposition and Document Subpoenas*

17 William Garcia is believed to be the Director of Tribal Works for the Pueblo at the time
18 of the disposal, and accepted the sludge for disposal on behalf of the Pueblo. Mr. Garcia thus
19 has firsthand knowledge of the subject matter of the Compliance Order. Mr. Garcia is
20 reasonably expected to provide information that BL Santa Fe has no means of otherwise
21 obtaining before the hearing, including the content of communications between BL Santa Fe
22 representatives and transporters, and the Pueblo, regarding the nature of the waste to be placed at
23 the site, and whether the Pueblo knowingly accepted the waste. Indeed, Mr. Garcia issued a
24 Certificate of Disposal to BL Santa Fe describing the waste accepted for disposal as including
25 "sludge, damp sludge, and rubber liner," suggesting that the Pueblo knew exactly what it had
26 accepted for disposal. See Amended Answer, ¶ 16. Mr. Garcia is also likely to have knowledge
27 regarding what other waste has been placed at the site over the years, which bears directly on the
28 question of whether BL Santa Fe should bear the cost of remediation and relocation, as the

1 NMED seeks to do. BL Santa Fe requested to informally interview Mr. Garcia to reduce burden
2 and expense (in addition to requesting an inspection of the site), but the Pueblo's attorney has
3 not responded. See **Exhibit 3**. Neither the NMED, nor Mr. Garcia, will be unreasonably
4 burdened by his deposition, which will be taken at a time and location of his convenience, with
5 appropriate accommodations, and within an appropriate duration based on his knowledge and
6 recollection. BL Santa Fe will stipulate to a reasonable duration for the deposition length, as a
7 condition to authorizing this deposition.

8 Richard Holland was the former manager and owner of BL Santa Fe before BL Santa Fe
9 was purchased by its current owners. Mr. Holland is believed to have directed the transportation
10 and disposal of the sludge. Mr. Holland is believed to possess relevant records of BL Santa Fe
11 that have not been turned over to the new owners and management team. Because of the history
12 between BL Santa Fe and Mr. Holland (among other things, Mr. Holland objected to the
13 purchase and hid from the new owners the existence of these proceeds prior to the purchase), BL
14 Santa Fe does not expect Mr. Holland's cooperation and has therefore not asked to informally
15 interview him, as such request would be futile. Finally, the NMED will not be unreasonably
16 burdened by his deposition. Indeed, the NMED's objectives are furthered by pursuing the
17 individual who actually directed or who was otherwise responsible for the allegedly improper
18 transport and disposal of the sludge, particularly when that individual continues to engage in the
19 same business, only under a rebranded name. See **Exhibit 4** (copy of website from December 2,
20 2021, stating that "the firm was previously known as [Respondent] HRV Hotel Partners before
21 recently being rebranded as Holland Development Co.").

22 James Spehar is believed to have been the former Wastewater Treatment Plant Operator
23 for Bishop's Lodge. Mr. Spehar is believed to have been working at the request or under the
24 authority of Mr. Holland when arranging for transport and disposal of the sludge. Mr. Spehar is
25 expected to have participated in discussions about the characteristics of the sludge with the
26 Pueblo's representatives and to have knowledge about representations made to BL Santa Fe, the
27 transporters, and the operator of the disposal location. Mr. Spehar has not responded to BL
28 Santa Fe's several attempts to informally interview him. Finally, neither the NMED, nor Mr.

Spehar, will be unreasonably burdened by his deposition, which will be taken at a time and location of his convenience, with appropriate accommodations, and within an appropriate duration based on his knowledge and recollection. BL Santa Fe will stipulate to a reasonable duration for the deposition length, as a condition to authorizing this deposition.

Advanced Environmental Solutions (“AES”) is the contractor retained by the Pueblo to provide an estimate of the cost of removing and remediating waste at the disposal location. As to AES, BL Santa Fe has only requested documents at this time. AES is expected to have documents regarding the characteristics of the waste, the current conditions of the site, and the presence of other waste at the site. AES may also have testing from the site, and analysis of that testing, which is relevant to the NMED’s demand that BL Santa Fe enter Pueblo lands to remediate and relocate waste, some of which does not appear to have been placed by BL Santa Fe.² BL Santa Fe has attempted to informally obtain information from the Pueblo’s attorney on these subjects to avoid subpoenaing AES, but the Pueblo’s attorney has not responded. *See **Exhibit 3.*** Finally, AES will not be unreasonably burdened by providing its records, particularly when BL Santa Fe will reimburse reasonable expenses in doing so.

DATED this 9th day of December, 2021.

SNELL & WILMER L.L.P.



By: _____

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² For example, AES has described the waste as including “1,300 cubic yards of baled tires,” which, to BL Santa Fe’s understanding, it would not have placed.

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2 **ORDER GRANTING BL SANTA FE's MOTION REQUESTING**
3 **INTERROGATORIES AND DEPOSITIONS**

4 Finding the proposed interrogatories, depositions, and document subpoenas meet the
5 grounds stated in 20.1.5.300(A)(1) NMAC, IT IS SO ORDERED that BL Santa Fe, LLC may
6 propound interrogatories on the New Mexico Environment Department and take depositions and
7 / or subpoena documents of William Garcia, Richard Holland, James Spehar, and Advanced
8 Environmental Solutions.
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CERTIFICATE OF SERVICE

I certify that on this 9th day of December, 2021, a copy of the foregoing Motion By BL Santa Fe, LLC Requesting Interrogatories and Depositions was served via first class mail and email to the following:

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